***THE HON'BLE Ms. JUSTICE G. ROHINI**

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+WRIT PETITION NO.12158 OF 2005

AND

WRIT PETITION NO.12161 OF 2005

% 21/11/2005

1. Gurazala Siva Prasad and others. … Petitioners

Vs.

$ 1. Govt. of A.P., rep. by its Principal Secretary

to Government, Irrigation & CAD Department,

Secretariat, Hyderabad and others. … Respondents

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> Head Note :

! Counsel for the petitioners : M/s. N. Subba Rao

^ Counsel for the respondents : Govt. Pleader for Irrigation &

Command Area Development

Cases Referred :

1999 (2) ALD 318

THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION NO.12158 OF 2005

AND

WRIT PETITION NO.12161 OF 2005

Dated: 21st November, 2005

Between:

1. Gurazala Siva Prasad and others. … Petitioners

And

1. Govt. of A.P., rep. by its Principal Secretary to Government, Irrigation & CAD Department, Secretariat, Hyderabad and others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.12158 OF 2005

AND

WRIT PETITION NO.12161 OF 2005

COMMON ORDER :

These two writ petitions are filed seeking a declaration that the action of the 1st respondent in issuing G.O.Rt.No.510, Irrigation & Command Area Development (General.IV) Department, dated 24-4-2005 thereby staying the elections to the two Water Users Associations namely Kommuru–2 Water Users Association and

Kakumanu–186 Water Users Association along with six other associations purportedly in exercise of the powers conferred under Section 4 (5) of the A.P. Farmers Management of Irrigation Systems Act, 1997 (for short, 'the Act') and subsequently in issuing G.O.Rt.No.1039, Irrigation & Command Area Development (General.IV) Department, dated 8-7-2005 whereunder earlier order of stay was vacated and the District Collector was requested to conduct elections during the month of December, 2005 along with other Water Users Associations as arbitrary and illegal.

Since common questions of fact and law are involved, these two writ petitions are heard together and decided by this common order.

The facts, which are not in dispute, are as under :

The Commissioner, G.A.D. and Principal Secretary, Irrigation, A.P., Hyderabad has issued the election schedule to the two Water Users Associations in question among other similarly situated Associations vide proceedings dated 16-03-2005. The said election schedule is as follows :

01	*Display of Voters List in Form D.*	*21-3-2005*
02	*Last Date for filing objections*	*28-3-2005*
03	*Final publication of voters list in Form I*	*04-04-2005*
04	*Notification for election by Commissioner*	*06-04-2005*
05	*Notification by the District Collector*	*12-04-2005*
06	*Publication of polling stations*	*13-04-2005*
07	*Objections on polling stations*	*15-04-2005*
08	*Final Notification of polling stations*	*18-04-2005*
09	*Appointment of polling officers and training*	*8-4-2005 to18-4-2005*
10	*Notification by Election Officer*	*21-04-2005*
11	*Elections to Major and Medium WUAs*	*25-4-2005 to26-4-2005*

Accordingly, the voters lists were updated and final electoral rolls were also published in the prescribed manner as per the schedule fixed. The Election Officers were appointed and they issued public notice for election to the posts of Members of Territorial Constituencies, Presidents, and Vice-Presidents under Form-3A on 21-4-2005 prescribing the schedule as under :

S.No.	*Stage of Election*	Time
(1)	*(2)*	(3)
25-04-2005 First day (nominations)		
1.	*Receipt of nominations from the contesting candidates for the election of Members of Territorial Constituencies*	9.00 – 12.00 Noon
2.	*Security of nominations and publication of nominations*	12.00 Noon – 2.00 pm
3.	*Withdrawal of candidature*	*2.00 – 4.00 pm*
4.	*Publication of final list of contestants and allotment of election symbols*	*4.00 pm onwards till completion*
26-04-2005 Second day (polling and results)		
5.	*Polling to elect members of Territorial Constituencies*	*7.00 – 1.00 pm*
6.	*Counting of votes and declaration of results*	*2.00 – 4.00 pm*
7.	*Special Managing Committee meetingiii) Fixing tenuresiv) Election to the posts of President and Vice-President and declaration of results.*	*4.00 – 4.30 pm4.30 pm onwards till completion on the same day.*

The petitioners in W.P.No.12158 of 2005 who are the members of Kommuru–2 Water Users Association filed nominations for the posts of the Members of the Territorial Constituencies. In Kommuru-2 Water Users Association, there are total 12

Territorial Constituencies and one nomination each was received in respect of the said 12 Territorial Constituencies and the same were found to be valid. It is not in dispute that the said 12 nominations were filed by the 12 petitioners herein. Accordingly, the list of valid nominations was published in Form-6 on 25-4-2005 and the same was also affixed on the notice-board. Since only one valid nomination for each territorial constituency was received, the petitioners claim that they are deemed to have been elected unanimously for the respective territorial constituencies.

Similarly, in W.P.No.12161 of 2005 the 12 petitioners therein filed nominations in respect of the posts of Members of 12 territorial constituencies of Kakumanu-186 Water Users Association. Since each one of them filed one nomination in respect of each Constituency which were found to be only valid nominations, they are deemed to have been elected unanimously for the respective territorial constituencies. The list of valid nominations was published on 25-4-2005 and the same was also affixed on the notice-board.

However, in pursuance of the impugned G.O.Rt.No.510, Irrigation & Command Area Development (General.IV) Department, dated 24-4-2005, which was communicated to the Election Officer on 25-4-2005 at 2.30 pm, the entire election process was stopped and the voters of the two Water Users Associations were informed accordingly.

Aggrieved by the said action, initially dthese two writ petitions were filed seeking a declaration that G.O.Rt.No.510, dated 24-4-2005 in staying the elections is arbitrary and illegal and amounts to colourable exercise of power. After Rule Nisi was ordered, during the pendency of these writ petitions the 1st respondent passed orders in G.O.Rt.No.1039, Irrigation & Command Area Development (General.IV) Department, dated 8-7-2005 vacating the stay of elections granted under G.O.Rt.No.510, dated 24-4-2005 and directing the concerned District Collectors, to conduct elections during the month of December, 2005 along with other Water Users Associations. In the circumstances, the prayer in the writ petitions has been suitably amended, thereby seeking a further declaration that the subsequent order in G.O.Rt.No.1039, dated 8-7-2005 directing to conduct elections afresh instead of

directing to continue the election process where it was stopped is arbitrary and illegal.

In the counter-affidavits filed on behalf of the respondents, the fact that there was no contest in any territorial constituency in the two Water Users Associations in question has not been disputed. However, it was pleaded that the entire election process was stopped on 25-4-2005 in pursuance of the impugned order dated 24-4-2005 staying the conduct of elections to the Associations in question. It was contended that the 1st respondent – Government is competent to pass such order under Section 4 (5) of the Act and therefore the interference by this Court is not warranted.

I have heard the learned Counsel for the petitioners as well as the learned Government Pleader appearing for the respondents and perused the material on record.

Before referring to the relevant statutory provisions, the impugned order dated 24-4-2005 may be extracted hereunder for proper appreciation of the controversy involved.

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

I&CAD Dept. – Major Irrigation – The A.P. Farmers Management of Irrigation Systems Act, 1997 – WUA Elections in Guntur District – Granting of stay for conducting of Elections to certain Water Users Associations – Orders – Issued.

IRRIGATION & COMMAND AREA DEVELOPMENT (GENERL.IV) DEPARTMENT

G.O.Rt.No.510 Dated 24-04-2005

Read the following :-

1. *G.O.Ms.No.20, I&CAD (CAD.IV) Dept., dated.20-02-2003.*
2. *Representation from Sri kanna Lakshmi Narayana, Minister for Co-operation.*
3. *Representation from Sri Marri Rajasekhar, MLA.*
4. *Representation from Sri P.Lakshma Reddy, MLA.*

5. *Representation from the farmers of Water Users Associations.*

O R D E R :-

Hon'ble MLAs have represented that certain discrepancies are noticed in the voters list of the Water users Associations listed below which needs to be rectified and requested to grant stay for the elections of the following Water User Associations in Guntur District which are scheduled to be held on 26-04-2005.

S.No. Name of the WUA Mandal

1. Kommuru-1 WUA No.184 (LIS) Kakumanu

2. Kommuru-2 WUA No.185 (LIS) Kakumanu

3. Kakumanu WUA No.186 (LIS) Kakumanu

4. Chintapalli WUA No.28 Karampudi

5. Thallapalli WUA No.1 Macherla

6. WUA No.171, Iriapadu Nadendla

7. WUA No.127, Didugu Amaravathi

8. WUA No.142, Gottipadu Pathipadu

2. In exercise of the powers conferred in Section 4 (5) of the A.P. Farmers Management of Irrigation Systems Act, 1997 and after careful examination of the representation 2nd to 5th read above, Government hereby grant stay orders for the conducting of elections to the Water Users Associations mentioned above until further orders.

3. The Collector, Guntur District shall verify the voters list of the above said Water Users Associations and submit a detailed report to Government at an early date.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

S.P. TUCKER

PRINCIPAL SECRETARY TO GOVERNMENT

(IRRIGATION)

A perusal of the above order shows that the same was passed purportedly in exercise of the powers conferred under Section 4 (5) of the Act, on the basis of the representations said to have been made by the Minister for Co-operation, two Members of the Legislative Assembly and the farmers of the Water Users Associations alleging that certain discrepancies were noticed in the voters list which

need to be rectified. It is also relevant to note that the Collector, Guntur district was directed to verify the voters list of the Water User Associations in question and submit a detailed report to the Government at an early date and the conduct of elections to the associations has been stayed until further orders.

Section 4 (5) of the Act, under which the impugned order dated 24-4-2005 was passed runs as under :

> *(5) The District Collector shall cause arrangements for the election of a managing committee consisting of one member from each of the Territorial Constituencies of a Water Users area by a simplified election procedure in the manner prescribed :*
>
> *Provided that for the reasons to be recorded in writing the Government may, from time to time, postpone the elections.*

It is no doubt true that the proviso to Sub-section (5) of Section 4 empowers the Government to postpone the elections from time to time for the reasons to be recorded in writing. Though such power cannot be held to be arbitrary, the question is whether exercise of such power on the ground of alleged discrepancies in the voters list is permissible.

In exercise of the Rule Making Power conferred under Section 43 of the Act, A.P. Farmers Management of Irrigation Systems (Conduct of Elections) Rules, 2003 (for short, 'the Rules') have been made under G.O.Ms.No.47, Irrigation & Command Area Development (CAD-IV), Dated 04-04-2003. As per Rule-4 of the Rules the District Collector shall be the District Election Authority, who is also competent to perform the functions of the Election Authority within his jurisdiction unless specifically otherwise provided, for the purpose of conducting the elections under the Act. Under Rule-5 of the Rules, the District Election Authority shall designate by order an officer as Election Officer as specified thereunder and it shall be the duty of the Election Officer at any election to do all such acts and things as may be necessary for conducting the elections in the manner provided under the Act, Rules or Orders made thereunder for any Farmers Organisation.

Chapter-III of the Rules, consisting of Rules 37 to 44, in detail provides for adjournment of polls in different contingencies. Rule-37 empowers the District Election Authority to alter the election programme where the election process is interrupted or the election programme has to be altered on account of the orders of any Court of law or for other valid reasons to be recorded in writing and the Election Officer shall give effect to the same. The proviso to Rule-37 makes it clear that where the election programme is re-notified under Rule-37 commencing from the activity of filing of nominations, the nominations already received need not be disregarded.

Rule-40 of the Rules enumerates the circumstances under which the poll can be adjourned by the Election Officer. As per Sub-rule (1) of Rule-40 where the proceedings at any polling station are seriously interrupted or obstructed by any riot or open violence or otherwise or where a large number of voters are unable to attend the poll at a poling station by reason of an act of God such as flood or fire, etc., the Election Officer shall stop the poll at that polling station pending receipt of the orders of the District Election Authority and the fact that the poll has been so stopped shall be immediately announced by the Election Officer to the persons present at the polling station. Where the Election Officer so stops a poll in the circumstances stated above, Sub-rule (2) of Rule 40 provides that he shall observe the procedure given in the manual for closing of poll and sealing of voting boxes, covers, accounting of voting slips, etc., and forthwith make the full report of the circumstances to the District Election Authority. Thereupon, the District Election Authority under Sub-rule (3) shall order for continuation of poll or for holding a fresh poll as specified thereunder.

Rule-41 provides for the procedure to be followed for continuation of poll after adjournment in terms of Clause (a) of Rule 40 (3) of the Rules. Similarly, Rule-42 provides for the procedure for fresh poll after adjournment in terms of Clause (b) of Rule-40 (3) of the Rules. Rule-43 provides for stopping the proceedings if a candidate dies and Rule-44 provides that the counting of votes shall be stopped in the event of disturbances at the time of counting of votes.

As can be seen from the scheme envisaged under the Rules referred to above relating to conduct of elections to the Managing Committees of the Water Users Associations, in case of emergencies as specified under Rule 40, the Election Officer is competent to stop the poll pending receipt of the orders of the District Election Authority. After receiving such report, the District Election Authority shall pass appropriate orders either to continue the poll or to hold fresh poll following the procedure prescribed under Rules 41 and 42 respectively.

That apart, the District Election Authority is also conferred with power to alter the election programme under Rule 37 where the election process is interrupted on account of the orders of any Court of law or for other valid reasons to be recorded in writing.

It is to be noted that both under Rule-37 and Rule-40 the circumstances under which the election process can be altered have been enumerated. The said two Rules to the extent they are relevant run as under :

> ***37. Special election Programme*** *:- Notwithstanding anything contained in these Rules, where the election process is interrupted or the election programme has to be altered on account of the orders of any Court of law or for other valid reasons to be recorded in writing, it shall be competent for the District Election Authority either generally or in respect of a specified Farmers Organisation, to alter the election programme as he deems fit in the circumstances of the case and the Election Officer shall give effect to the same.*
>
> ***40. Adjournment of poll in emergencies*** *:- (1) Where, (a) the proceedings at any Polling Station are seriously interrupted or obstructed by any riot or open violence or otherwise or (b) where a large number of voters are unable to attend the poll at a Polling Station by reason of an act of God, such as flood or fire etc., the Election Officer shall stop the poll at that Polling Station, pending receipt of the orders of the District Election Authority. The fact that the poll has been so stopped shall be immediately announced by the Election Officer to the persons present at the Polling Station.*
>
> *(2) … … … … … … … …*

In the case on hand, it is not in dispute that the election process was stayed by the Government, but not by the District Election Authority or the Election Officer. The

impugned order dated 24-4-2005, extracted above, shows that the said order was passed in exercise of the power under Section 4 (5) of the Act on the basis of the representations made by some of the Members of the Legislative Assembly stating that certain discrepancies were noticed in the voters list which need to be rectified.

The learned Counsel for the petitioners contends that though under Section 4 (5) of the Act the Government is competent to postpone the election, such power cannot be exercised to interdict the election process on the ground of the alleged discrepancies in the voters list.

As noted above, the only provision that is available for postponement of elections by the Government is Sub-section (5) of Section 4 of the Act. It is true that Sub-section (5) of Section 4 of the Act does not specify the circumstances under which the elections can be postponed nor it provides for the effect of such postponement. However, it is clear that, while exercising the power under Section 4 (5) of the Act, the Government has to record the reasons in writing for postponement of Elections. Thus, it is clear that the discretion allowed is intended to be exercised based on rational and relevant considerations. Merely because the Act and Rules are silent as to the manner in which the power conferred on the Government under Section 4 (5) to postpone the elections can be exercised, it cannot act whimsically or arbitrarily, but it should act fairly and reasonably so as to subserve the purpose for which such power is conferred and the same shall be reflected in the reasons assigned. The law is well settled that even in the absence of any express provision under the Statute providing guidance for exercise of discretionary power, it is always open to this Court under Article 226 of the Constitution of India to examine whether there is a reasonable and rationale basis for exercising such power and in case it is found that the reasons given by the authority are not relevant for the purpose for which the power is conferred, the same is amenable to judicial review.

As noted above, Rule-37 and Rule-40 conferred power on the District Election Authority and the Election Officer respectively for postponing the election proceedings only in the contingencies mentioned thereunder. Even in the absence of such express provision, the guidelines for exercise of power by the Government

under Section 4 (5) can be gathered from Rules 37 and 40 which deal with identical circumstances.

A Division Bench of this Court in M.A.R.V.S. SAI BABU v. COMMR. AND REGISTRAR OF CO-OP. SOCIETIES having considered an identical question which arose under the provisions of A.P. Co-operative Societies Rules, held as under :

> *"Rules 22 and 22-AAA of the Rules have to be harmoniously read and construed and Rule 22-AAA cannot be read as more than conferring the power on the Collector and the Government of postponing the poll apart than reasons available to the Election Officer under Rule 22 and as such, the Government or any of its authorities cannot postpone the poll for reasons other than stated in Rule 22, i.e., rioting or any other sufficient cause and as already stated above, irregularities in the voters list, after the commencement of election process is not one among such sufficient causes."*

In the said case, the elections to the co-operative societies were stayed by the Government by invoking the power under Rule 22-AAA of the A.P. Co-operative Societies Rules. A batch of writ petitions were filed by the aggrieved parties questioning the said action of stalling the election to the Committees of the Co-operative Societies after the commencement of the election process.

Under Rule 22-AAA of the A.P. Co-operative Societies Rules, the Government and the Election Authority are empowered to postpone or alter the date of election to the societies fixed or commenced under Rule 22 or Rule 22-B at any stage thereof for the reasons to be recorded in writing. Rule 22-AAA of the A.P. Co-operative Societies Rules may be extracted as under :

> *"Notwithstanding anything contained in these rules the Government or the Election Authority, may, for the reasons to be recorded in writing direct from time to time, the postponement or alteration of the date or the dates of election to the societies fixed or commenced under Rule 22 or Rule 22-B at any stage thereof and the Election Officer shall give effect to the directions issued under this Rule. On such postponement or alteration of the date or dates of election the earlier notification shall stand rescinded in all respects and the eligibility of the voters shall be detriment in accordance with Sub-rule (3) of Rule 22." (emphasis supplied)*

The Division Bench having considered all the relevant provisions under the A.P. Co-

operative Societies Act, 1964 as well as the Rules made thereunder, though upheld the power conferred on the Government and the District Collector to postpone the election under Rule 22-AAA held that the action of postponing the elections on the ground of irregularities in the voters list was invalid as being contrary to Section 61 (3) and (4) of the A.P. Co-operative Societies Act. That apart, so far as the later part of Rule 22-AAA of the A.P. Co-operative Societies Rules is concerned, which provided that on postponement of the date of election, the earlier notification shall stand rescinded in all respects, the Division Bench held that to be in consonance with Rule 22 the postponed election has to start from the stage where it was stopped with the same contestants and with the same voters list and accordingly declared the later part of Rule 22-AAA as unconstitutional and ultra vires the Act. Thus, it was concluded that invocation of Rule 22-AAA cannot have affect of cancelling the election notification issued earlier or enabling fresh enrollment of members.

Subsequently, by virtue of the amendment to the A.P. Co-operative Societies Rules made under G.O.Ms.No.15, dated 15-1-2002, Rule 22-AAA was omitted and Rule 22-C has been inserted which runs as under :

> *"22-C. (1) Notwithstanding anything contained in these rules, the Government or the Election authority may direct the postponement of elections under one or more of the following circumstances :-*
>
> *(i) Break down of law and order affecting the peaceful and lawful conduct of elections.*
>
> *(ii) Any natural calamity that prevents the conduct of elections particularly, voters from participation in the election.*
>
> *(iii) Where there is reasonable apprehension that voters will not be allowed to vote frankly and freely.*
>
> *b) The postponement hall be done only by issue of an order which shall specify the grounds of postponement. After such postponement the election process shall be recommended when the conditions become conductive for recommencing of election, by issue of an order by the Authority that has postponed the elections. The process will recommence from the stage at which it was obstructed or interrupted."*

Rule 40 of the A.P. Farmers Management of Irrigation Systems (Conduct of

Elections) Rules, 2003 is *in pari materia* with Rule 22-C of the A.P. Co-operative Societies Rules, 1964 which provides for stalling the election process under the circumstances specified thereunder. Hence, I find force in the submission of the learned Counsel for the petitioners that the ratio laid down in the above decision would squarely apply to the case on hand. Therefore on a harmonious reading of Section 4 (5) of the Act and Rules 37 and 40 of the Rules, I am of the opinion that it is not open to the Government to postpone the election on any ground other than the grounds available under Rules 37 and 40. Thus, the action of the 1st respondent in postponing the elections on the ground of alleged discrepancies in the voters list is liable to be declared as illegal.

It is also relevant to note that, during the pendency of this writ petition, the 1st respondent issued G.O.Rt.No.1039, dated 8-7-2005 vacating the order of stay granted under G.O.Rt.No.510, dated 24-4-2005 which is impugned in these two writ petitions and directing the concerned District Collectors to go ahead for preparation of the elections to the associations along with other associations which were postponed by the District Collectors concerned. Strangely, in the said order, the 1st respondent has not assigned any reasons while permitting the District Collector to proceed with the elections much less the said order discloses any steps taken for rectification of the alleged discrepancies in the voters list, on which ground the elections were initially stayed. This itself shows that the 1st respondent has exercised the power under Section 4 (5) of the Act in an unfair and arbitrary manner and has stayed the elections without there being any valid and genuine reason. At any rate, even assuming that there was any discrepancy in the voters list, the person aggrieved has to invoke the remedy under Rule 148 which provides for settlement of election disputes by way of election petition before an Election Tribunal, but on that ground the election process cannot be interdicted. Undoubtedly, such action is contrary to the scheme of the Act and Rules and amounts to abuse of discretion conferred under the Act.

I also find force in the submission of the learned Counsel for the petitioners that having postponed the elections illegally under the impugned order, the 1st respondent is not at all justified in directing to conduct the elections afresh under

G.O.Rt.No.1039, dated 8-7-2005 which would result in defeating the rights of the petitioners whose nominations filed on 24-04-2005 were found to be only valid nominations, thereby entitling them to be elected unanimously.

In this context, it is relevant to note that Rule 11 of Election Manual for Farmers Organisation categorically states that if there is only one validly nominated candidate, the Election Officer shall forthwith declare such candidate as duly elected in Form-9 and send the same to the Election Authority and the District Election Authority. From the counter-affidavit filed by the respondents, absolutely no valid reason is forthcoming for not following the said mandate.

Under identical circumstances, the Division Bench in M.A.R.V.S. SAI BABU'S case (1 supra) has struck down the later part of Rule 22-AAA of the A.P. Co-operative Societies Rules, 1964 which provided that on postponement of the election, the earlier notification shall stand rescinded in all respects. The Division Bench held that the postponed election has to start from the stage where it was stopped with the same contestants and with the same voters list.

Hence, the order dated 8-7-2005 to the extent of directing conduct of elections along with other Water Users Associations is also liable to be declared as illegal and the respondents shall continue the election process from the stage where it was stopped.

Accordingly, the Writ Petitions are disposed of holding that the impugned order dated 24-4-2005 so far as the Kommuru–2 Water Users Association and Kakumanu–186 Water Users Association are concerned is arbitrary and illegal and the same is set aside to that extent. The subsequent order dated 8-7-2005 to the extent of directing the 2nd respondent to conduct the election to the two societies in question along with other Water Users Associations is also declared as illegal and accordingly the respondents are directed to continue the election process in respect of Kommuru–2 Water Users Association and Kakumanu–186 Water Users Association from the stage where it was stopped.

The Writ Petitions are accordingly disposed of. No costs.

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21st November, 2005.

Note:- LR copy to be marked.

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THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION NO.12158 OF 2005

AND

WRIT PETITION NO.12161 OF 2005

Dated: 21st November, 2005